UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHAW RAHMAN, Plaintiff, v. CRYSTAL EQUATION, et. al. Defendants.	CASE NO. C13-218-MJP ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendants' motion for summary judgment. (Dkt. No. 105.) Having reviewed the motion, the response (Dkt. No. 124), the replies (Dkt. Nos. 126, 127), the Court GRANTS the motion and DISMISSES Plaintiff's claims.

Background

This is an employment discrimination case. Plaintiff was a software architect hired by Crystal Equation, a staffing company. (Dkt. Nos. 98 at 2, 106-1 at 131, 169.) Plaintiff signed his employment agreement with Crystal Equation on June 10, 2011. (Dkt. No. 107-1 at 45.) That agreement set out certain aspects of the relationship, including that it was "Employment At-Will." (Id. at 171.) He also signed a separate document, entitled "At Will Relationship." By

signing the document, Plaintiff acknowledged that his employment was "not for a specified period of time and can be terminated at any time for any reason, with or without cause, by me or the Company. I acknowledge that no statements or representations regarding my employment can alter the foregoing." (Id. at 46.)

Crystal Equation assigned Plaintiff to work for its client, AT&T, as a software architect. (Dkt. No. 106-1 at 178.) Shortly after beginning this assignment, AT&T requested Plaintiff travel to Atlanta, Georgia, in order to attend a presentation. (Id. at 165.) Plaintiff did not believe travel was part of his job description and protested the request to his superiors. (Id. at 127.) Nonetheless, he traveled to Atlanta. (Id.) His travel arrangements were arranged by Miles Muslin, a recruiter with Crystal Equation. (Id. at 181.) The hotel reservation email receipt shows Plaintiff was booked for two nights at the Courtyard Marriott in Atlanta, Georgia. It does not show what room Plaintiff would stay in. (Id.) When Plaintiff arrived at the hotel, he was assigned to room 911. (Id. at 105.) Plaintiff requested hotel staff find another room, but none was available. (Id.) Plaintiff claims his is stay in room 911 was religious discrimination by his employer, because his former first name is Mohammad and, as a Muslim, his room placement was intended to humiliate and remind him of the events on September 11, 2001. In his deposition though, Plaintiff explained that he "cannot say for sure whether [Mr. Muslin] deliberately asked for room 911." (Id. at 104.)

Plaintiff appears to have worked his assignment at AT&T for several months without incident. In late fall of 2011, AT&T requested Plaintiff generate security certificates, apparently after a former staff member who handled the task left AT&T. (Dkt. Nos. 124-1 at 25-32, 106-1 at 52.) Plaintiff in turn, "repeatedly told him [his supervisor Ron Barchi] I do not want to do that. That's too much responsibility." (Id. at 51.) AT&T sought to have Plaintiff instructed on the task, to increase his comfort level. (Id. at 54.) Nonetheless, Plaintiff refused to generate the security certificates. (Id. at 58.)

In January 2012, AT&T notified Plaintiff that his position had been eliminated:

> Shaw
> Looks like I am losing your position on the team. I am going to have to end your con[r]tact by the end of next week. Let your contracting firm know. . . .
> It's been quite an interesting ride with all this, and [I] am glad you were on my team.
> Ron

(Id. at 107-1 at 37.)

Eight months after the termination of his employment with AT&T and Crystal Equation, Plaintiff filed discrimination charges with the United States Equal Employment Opportunity Commission. (Dkt. No. 19.) Plaintiff's charge alleged "Respondent discriminated against me by booking me into room #9-11 at the Marriot [sic] hotel in Atlanta, as they were aware that my first name is Mohammad." (Id.) The charge also stated, without specification, "I was also given more responsibilities and subjected to different terms and conditions of employment." (Id.) Plaintiff received his right to sue letter in November 2012. (Dkt. No. 106-1 at 201.)

He filed this suit in February 2013, initially as two separate actions. (Dkt. No. 29.) He asserted claims for discrimination based on religion and nation origin, as well as hostile workplace, retaliation, and breach of contract claims. (Id.) The Court consolidated the cases. (Id.)

Defendants move for summary judgment on all claims.

Discussion

A. Legal Standard

Summary judgment is not warranted if a material issue of fact exists for trial. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995). The underlying facts are viewed in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). "Summary judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment has the burden to show initially the absence of a genuine issue concerning any material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970). However, once the moving party has met its initial burden, the burden shifts to the nonmoving party to establish the existence of an issue of fact regarding an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). To discharge this burden, the nonmoving party cannot rely on its pleadings, but instead must have evidence showing that there is a genuine issue for trial. Id. at 324.

B. Discrimination Claims

Title VII makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, or national origin." 42 U.S.C. § 2000e-2(a)(1).

To make out a claim for discrimination under a disparate treatment theory, the plaintiff must show: (1) he belongs to a protected class; (2) he was performing according to his employer's legitimate expectations; (3) he was subject to an adverse employment action; and (4) similarly situated individuals outside his protected class were treated more favorably. Cornwell v. Electra Cent. Credit Union, 439 F.3d 1018, 1028 (9th Cir. 2006). If the plaintiff meets these marks, the burden shifts to the defendant to establish a "legitimate, nondiscriminatory reason" for the alleged action. Id. If the defendant is successful, the presumption of discrimination disappears and burden shifts back to the plaintiff to establish discrimination or a dispute of fact related thereto.

Plaintiff can meet the standard of proof required by Fed. R. Civ. P. 56(c) for a disparate treatment claim in two ways. First, a plaintiff may offer evidence, direct or circumstantial, "that

a discriminatory reason more likely motivated the employer" to make the challenged employment decision. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981). Second, a disparate treatment plaintiff may alternatively offer evidence "that the employer's proffered explanation is unworthy of credence." Id. This method often allows a plaintiff to defeat a defendant's motion for summary judgment by offering proof that the employer's legitimate, nondiscriminatory reason is actually a pretext for racial discrimination. Cornwell, 439 F.3d at 1028.

Plaintiff fails to establish a prima facie case that Defendants discriminated against him based on his religion or national origin under either method.

Mr. Rahman fails to demonstrate any triable issues of fact on his religious discrimination claim. Two fundamental flaws exist. First, nothing in the record supports the notion that Crystal Equation and Miles Muslin, who booked the travel arrangements, knew of Plaintiff's former name. All Plaintiff offers is conjecture: "it is prior to the job agreement conversation, that was disclosed to Miles [Muslin] that plaintiff, changed his name and a copy of passport showing national origin was provided to him as identification." (Dkt. No. 124 at 9.) Plaintiff fails to offer his passport evidencing his former name, nor does he offer any admissible evidence of this alleged event.[1] Even if the Court ignores those problems with Plaintiff's claim, nothing in the record shows Crystal Equation or Miles Muslin actually booked him into room 911. Plaintiff

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[1] Plaintiff fails to meet the evidentiary standards for summary judgment. Federal Rule of Civil Procedure 56(c) requires that factual propositions be supported by "affidavits or declarations," and further provides clear requirements for such testimonial support. See Fed. R. Civ. P. 56(c)(4); see also Beyene v. Coleman Sec. Servs., Inc., 854 F.2d 1179, 1181 (9th Cir. 1988) (trial court may only consider admissible evidence in ruling on a motion for summary judgment). Plaintiff attaches several emails and other documents to his opposition to the motion for summary judgment, but no foundation or authenticity is offered. In other instances, Plaintiff makes assertions in his opposition motion wholly unsupported by the record.

offers the initial email confirmation from Mr. Muslin showing a general room reservation. Plaintiff also points to what appears to be a final receipt from the Marriott. But, the receipt only shows he stayed in room 911, not that Crystal Equation or Miles Muslin placed him there. Without proof of a predicate discriminatory act, the Court GRANTS summary judgment to Defendants on this claim.

Plaintiff's claim for discrimination based on national origin also lacks genuine issues of material fact for trial. Plaintiff claims he was terminated from employment because of his national origin. The record does not support his claim. First, Plaintiff fails to show that his supervisor at AT&T knew of his national origin. Indeed, the speculative nature of Plaintiff's contention is apparent from his deposition testimony: "if Ron Barchi disclose it [Plaintiff's name] to him [another AT&T employee and supervisor] then he would instantly know that I would be from Bangladesh because Mohammad Rahman is a very common name in Bangladesh and not too common in India." (Dkt. No. 106-1 at 102.) Other than his conjecture, nothing suggests AT&T knew or perceived him to be a member of a protected class. Second, even if the Court were to accept Plaintiff's contention as true, nothing in the record suggests he was terminated due to his national origin. Consequently, he fails to make a prima facie claim for employment discrimination based on national origin.

Plaintiff suggests his employer's allegedly non-discriminatory reason for his termination, downsizing of the department, was pretext. (Dkt. No. 124 at 12-13.) He claims to have been performing his job adequately. (Id.) But, Plaintiff refused to perform certain tasks requested of him, even after AT&T sought to provide training. While Plaintiff may believe he was justified in refusing to perform certain tasks, Plaintiff was an at will employee and his refusal to perform worked needed by AT&T does not constitute discrimination or retaliation. This is especially true

when the record fails to show Defendants knew the facts giving rise to his discrimination claims – that his former name was Mohammad or that he is from Bangladesh.

The Court GRANTS summary judgment to Defendants on the discrimination claims.

C. Hostile Work Environment

Plaintiff also fails to offer evidence for trial that he was subject to a hostile work environment. His claim of a hostile work environment centers around his supervisor's requests that he generate security certificates. (Dkt. No. 124 at 17.)

To establish a prima facie case for a hostile-work environment claim, Plaintiff must raise a triable issue of fact as to whether (1) the defendants subjected him to verbal or physical conduct based on his national origin or religion; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive working environment. Surrell v. California Water Serv., 518 F.3d 1097, 1108 (9th Cir. 2008). Plaintiff cannot make it past the first step: he presents no evidence suggesting AT&T's request he perform certain job functions were based on national origin, or religion. Rahman admitted this in his deposition, explain: "the harassment is within the contractual obligation, not on the discrimination based on national origin, race, or religion." (Dkt. No. 106-1 at 119).

Plaintiff's claim for hostile work environment fails, and summary judgment is awarded to Defendants.

D. Retaliation claim

To prevail on a retaliation claim, a plaintiff must show: (1) that he engaged in a protected activity; (2) that he suffered an adverse employment action; and (3) that there is a causal connection between the protected activity and the adverse employment action. Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 965 (9th Cir. 2004). A Plaintiff must prove that his

protected activity was the "but-for" cause of the adverse employment action. Univ. of Tex. Sw. Med. Ctr. v. Nassar, —— U.S. ——, 133 S.Ct. 2517, 2521 (2013) (holding that "Title VII retaliation claims require proof that the [employer's] desire to retaliate was the but-for cause of the challenged employment action"). Under the Washington's Law Against Discrimination, a plaintiff must merely demonstrate that the protected activity was a "substantial factor" in the employer's decision to take the adverse employment action. Allison v. Hous. Auth. of City of Seattle, 118 Wn.2d 79 (1991).

Plaintiff's retaliation claim fails as a matter of law, under either Title VII or WLAD, because he fails to show he engaged in a protected activity. Plaintiff never made a complaint of discrimination or otherwise opposed, in some way, conduct made unlawful by those statutes. Elvig, 375 F.3d at 965. Therefore, he cannot establish a prima facie case for retaliation. The Court DISMISSES this claim.

E. Breach of Contract Claim

Plaintiff's breach of contract claim presents no triable issues because he fails to show Crystal Equation breached their agreement with him. Plaintiff appears to claim the agreement was breached when Crystal Equation failed to provide two weeks' notice before terminating his employment. (Dkt. No. 127 at 12.) He also claims AT&T's requests to generate security certificates also breached a contract, because those tasks were not included in his job description. (Id.)

"The touchstone of contract interpretation is the parties' intent." Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn .2d 656, 674 (1996). Washington courts follow the "objective manifestation" theory of contracts. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503 (2005). A valid contract requires an objective manifestation of mutual assent to

its terms, rather than any unexpressed subjective intent of the parties. Hearst, 154 Wn.2d at 503. Courts will not impose obligations that the parties did not assume for themselves. Condon v. Condon, 177 Wn.2d 150, 162–63 (2013). A formation of a contract requires that there be an objective manifestation of mutual assent of both parties. P.E. Sys., LLC v. CPI Corp., 176 Wn.2d 198, 207 (2012). Words in a contract are given their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. Hearst, 154 Wn.2d at 504.

Plaintiff fails to show the first element of a contract claim, breach. As to the assertion he was entitled to two weeks' notice, the plain language of the Agreement between the Parties forecloses the claim:

> Employment at-will may be terminated at the will of either the employer or the Employee. Employment and compensation may be terminated with or without cause and with or without notice at any time by you or Crystal.

(Dkt. No. 107-1 at 45.) Likewise, Plaintiff's claim regarding a subsequent oral agreement altering that term of his employment, is also precluded by the Agreement. (Id. at 46.) ("I acknowledge that no statements or representations regarding my employment can alter the foregoing [at will status].") Plaintiff cannot make a claim for breach of contract.

Nor does Plaintiff show the job advertisement was itself an enforceable contract, which limited the tasks AT&T could request he perform. (Dkt. No. 106-1 at 166.) The job advertisement was sent to Plaintiff in an email with the explanation: "Shaw, Ronald Barchi would like to interview Shaw Rahman for service request 52308 (View Reply). The Vendor is Crystal Equation Corporation…." (Id.) The job advertisement provided a list of minimum requirements and contained a resume submittal deadline. (Id.) The record before this Court contains no evidence of mutual assent that the job advertisement constituted a contract or that the

parties intended to limit the scope of Plaintiff's job responsibilities to that document. See Hearst, 154 Wn.2d at 504.

The Court GRANTS the motion as to the breach of contract claim.

Conclusion

Because there are no genuine issues of material fact on any of Plaintiff's claims, the Court GRANTS summary judgment in favor of Defendants. The clerk is ordered to provide copies of this order to all counsel.

Dated this 5th day of March, 2014.

Marsha J. Pechman
Chief United States District Judge